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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/826,157	04/04/2001	John J. Hart III	E00366/70005 JNA	4012

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EXAMINER

PYZOCHA, MICHAEL J

ART UNIT	PAPER NUMBER
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2137

DATE MAILED: 10/03/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

09/826,157

Applicant(s)

HART ET AL.

Examiner

Michael Pyzocha

Art Unit

2137

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 22 September 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☒ Applicant's reply has overcome the following rejection(s): See Continuation Sheet.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 112-118 and 120-143.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____
13. ☐ Other: _____.


EMMANUEL L. MOISE
SUPERVISORY PATENT EXAMINER

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Continuation of 5. Applicant's reply has overcome the following rejection(s): claims 117-118, 120-121, 134-139 and 143 under 35 USC 112 second paragraph.

Continuation of 11. does NOT place the application in condition for allowance because: Applicant's remarks filed on 09/22/2005 have been considered, but are not persuasive: Applicant argues: claims 133-139 were improperly rejected under 35 USC 101; the modified system of Kock, Senoh and Girod does not teach the limitations of claims 112, 133, and 140 or the specific key in claims 113 and 114; and further fails to disclose scanning the audio data to identify locations.

Regarding Applicant's argument with respect to the rejections under 35 USC 101, as noted by Applicant on page 8 of the response were requirements for computer readable data to be statutory, claims 133-139 do not define "functional interrelationships between the data structure and the computer software and hardware components which permit the data structure's functionality to be realized." These claims merely define a data structure stored on a computer readable media and are therefore not statutory.

Regarding Applicant's arguments with respect to claims 112, 133 and 140, Kock teaches selecting a plurality of placement locations in the title data in the last paragraph of the right column on page 2. Senoh in lines 39-41 of column 2 teaches randomly selecting a plurality of number to frequency modulation relationships where the determining based on pseudo random numbers is the randomly selecting and because the frequency components are based on the numbers they are number to frequency relationships. When combined with Koch, the intermediate signal of Senoh is the placement locations of Koch. Finally Girod teaches frequency modulating information with random information to obtain the watermarked data (see the abstract). Therefore when combined with the system of Koch and Senoh, the information is modulated with the number to frequency relationships from Senoh at the locations of Koch.

Regarding Applicant's argument that the modified system of Koch, Senoh, and Girod fails to disclose the specific key in claims 113 and 114, if the key was not generated in view of the specific system the key would not work, therefore the key must be based on the selected locations and number to frequency relationships.

Regarding Applicant's argument that the modified system of Koch, Senoh, and Girod fails to disclose scanning the audio data to identify locations, Koch teaches a random sequence of locations for embedding the code, in order to create this sequence some method of scanning must occur, or the locations may not be in a region of the file.

It is also noted the amendments submitted overcome the rejections made under 35 USC 112 and would be entered upon appeal.